



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

SK/EMR/PP/MED/AA
F. #2019R00927

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 5, 2023

FILED UNDER SEAL

By ECF and Email

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Genaro Garcia Luna
Criminal Docket No. 19-576 (BMC)

Dear Judge Cogan:

In light of further witness disclosure issues today, the government respectfully requests the remedies set forth below.

Earlier today, the defendant once again revealed on the public docket the identity of a government witness. This is the third such transgression. On July 13, 2022, the defendant gratuitously identified three of the government's witnesses in a pretrial filing, despite the existence of a protective order in this case. See ECF No. 106. The Court instructed defense counsel to "be sensitive to the Government's concerns" regarding witness safety and make motions that identify witnesses under seal. See ECF No. 117 at 5. On January 26, 2023, the defendant again identified two of the government's witnesses on the public docket. See ECF No. 18 (docket entry since revised). The Court instructed defense counsel the next trial day (January 30, 2023): "I will urge you don't let that happen because then notice is going to get shorter." Trial Tr. 555. The defense has let it happen again.

First, the government respectfully submits that, going forward, the government should only be required to provide 24-hours notice of its witnesses. The government has already provided the defense with its witnesses for Monday through Wednesday of this week, so the revised notice requirement would apply starting with Thursday's witnesses.

Second, the government notes that since the Court's discussion with the parties regarding witness notice, the government has made a good faith effort to provide the defense with sufficient notice—and more notice than the Court ordered. On Tuesday, January 31, 2023, the government provided the defense with the witnesses for the remainder of last week. At the end of last week, on Friday, February 3, 2023, the government provided the defense with the

witnesses for Monday and Tuesday of this week. On Saturday, February 4, 2023, the government provided the defense with the witnesses for Monday, Tuesday, and Wednesday of this week. Earlier this evening, the government notified the defense of one additional witness for tomorrow—a former U.S. Ambassador to Mexico (Earl Anthony Wayne) whom the government considers a sensitive witness because of his prior position and because he has already been approached by a journalist within hours of arriving in Brooklyn for the trial. The defense has indicated that it objects to the government calling this witness on Monday. In light of the government having made a good faith effort to provide advance notice of its witness order for this week—farther in advance than the Court ordered—the government respectfully submits that it should be permitted to call Ambassador Wayne on Monday. As the Court noted when it issued its order: “This does not mean that you are not free to reorder as the exigencies of trial require and/or scheduling requires. That’s fine, but just make a good faith effort so they have a little better preparation.” Trial Tr. 556. Mr. Wayne’s § 3500 material consists of one 7-page memorandum of interview and 14 pages of accompanying agent notes, which were disclosed to the defense nearly two months ago on December 9, 2022.

Respectfully submitted,

BREON PEACE
United States Attorney

By: /s/
Saritha Komatireddy
Erin M. Reid
Philip Pilmar
Marietou E. Diouf
Adam Amir
Assistant U.S. Attorneys
(718) 254-7000

cc: Defense Counsel (by ECF)
Clerk of Court (BMC) (by ECF)